

Chapter highlights

- **Purpose:** This chapter provides discussion of post-award contract administration of IT procurements.
- **Key points:**
 - The process of contract administration begins with the solicitation documentation and continues through from the time of contract award until the work has been completed and accepted, any disputes or adjustments have been resolved, final payment has been made and the contract is formally closed out.
 - The contract administrator must understand all activities expected of him/her, based on the agency's protocol and in relation to the complexity and requirements of the specific IT contract.
 - The contract administrator should read and become familiar with the contractual documents in order to establish a schedule of activities for ensuring compliance by both parties to the contract—the supplier and the agency.
 - A successful contract is equally dependent on post-award administration as it is on a well-written statement of work or rigid performance standards.
 - Should any claims and disputes arise for either party during contract performance, accessibility to the contract administration file documents may be of paramount importance. Therefore, it is critical that all documentation regarding contract actions, supplier performance and agency performance are maintained and accessible.

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34.0 Introduction

Information technology (IT) contract administration principles share many best practices with other procurement categories. However, due to the nature and increasing complexity of IT contracts, the Commonwealth's growing strategic and daily dependence on IT and the escalating importance of supplier and project performance, post-award administration requires the application of specialized IT best practices. The Commonwealth's rising dependence on technology necessitates the use of well-thought-out procurement and business processes during the procurement planning, sourcing, management and administration of IT acquisitions.

The process of contract administration begins with the solicitation documentation and continues through from the time of contract award until the work has been completed and accepted, any disputes or adjustments have been resolved, final payment has been made and the contract is formally closed out.

This chapter focuses on the post-award administration of IT contracts, which often have complex interdependencies or serious risk considerations for supporting the operational backbone of public safety and citizen services offered by the Commonwealth.

34.1 General contract administration

Contract administration encompasses the oversight of the relationship and obligations between the agency and the contractor as they relate to contract performance. The contract administration activity begins with the signing of a contract or purchase order. Its purpose is to insure that the parties' performance is in accordance with the terms and conditions of the contractual agreement. Usually, a single contract administrator is assigned and identified in each contract.

The contract administrator must understand all functions expected in this role, based on the agency's protocol and in relation to the complexity and requirements of the specific IT contract. The contract administrator should become thoroughly familiar with the contract's requirements and be debriefed by the procurement lead (buyer/sourcing specialist/contract manager) as the contract is handed off for post-award administration. Additionally, the contract administrator should attend, and often host, any contract kick-off or orientation

meeting with the contract's supplier(s) and project stakeholders and continue in close contact with the project's business owner/project manager for the duration of the contract.

The contract administrator must ensure that the contract file or electronic storage location for the contract's administration documents is accurate and complete. Documentation in the contract file should include, but not be limited to:

- the signed contract and exhibits,
- supplier validations and certifications,
- all contract modifications and actions,
- supplier and agency communication regarding any contractual problems or issues
- deliverable transmittals and acceptance documents
- government- and supplier-furnished data, information, equipment transmittals,
- supplier performance or service level reports, evaluations and results

Should any claims and disputes arise for either party during contract performance, accessibility to these documents may be of paramount importance. Therefore, it is critical that all documentation regarding contract actions, supplier performance and agency performance are maintained and accessible.

34.1.1 Core contract administration functions

General contract administration has four core functions—monitoring contract compliance, modification processing and administration, conducting contract closeout, and conducting contract retirement. The sub-functions under each core function are taken to varying levels of granularity according to the agency's procedures and the requirements of the contract being administered:

- Monitor contract compliance
 - Attend/host contract kick-off meeting
 - Monitor supplier certifications and reporting
 - Insurance/bonding certificates
 - Statutory certificates (Dept. of Taxation, Federal debarment, lobbying)
 - Professional certificates
 - eVA registration validation
 - Small business certificates
 - SWaM reporting
 - Project status reporting
 - Performance reporting
 - Sales/usage reporting
 - Sales/IFA reporting (statewide contracts only)
 - Monitor/coordinate subcontractor approvals
 - Monitor deliverables and acceptance
 - Shipping and transportation
 - Project milestone deliverables
 - Soft- and hard-copy deliverables
 - Service and product deliverables
 - Written acceptance approvals
 - Monitor supplier performance
 - Service level
 - Schedule
 - Budget
 - Key personnel
 - Project/business process management

- Monitor supplier warranties
- Coordinate/monitor transmittal of or access to government data/property
 - Coordinate facility security access and badging
 - Coordinate confidentiality/non-disclosure agreements
- Monitor invoicing and payment
 - Processing
 - Budget and project approvals
- Monitor agency obligations
- Process disputes, claims and resolution
 - Intake, fact-finding, follow-up, closure
- Process requests under FOIA
- Modification processing and administration
 - Contractual terms
 - Term or termination
 - Assignments/novation
 - Pricing
 - Scope
 - Administrative changes
- Conduct contract closeout
 - Final supplier reports
 - Final deliverables
 - Final acceptance
 - Final property report
 - Final patent/royalty report
 - Final escrow report
 - Final payment
- Conduct contract retirement
 - Update agency/Commonwealth contract, portfolio management or financial systems
 - File closed
 - File archived for retention

The monitoring and processing of each of the above functions is normally completed by a contract administrator. Contract administrative data may be required for input both electronically and in the contract file, depending on the agency's business processes and procedures. Also, depending on the complexity and size of the project/contract, the assigned project manager, contract manager and contract administrator will work together to assure the contractual requirements for both parties are completed. For multi-million dollar or enterprise-sized contracts several contract administrators may be assigned to individual areas of responsibility.

34.1.2 Additional IT contract administration functions

Again, depending on the complexity, size and requirements of the IT contract, contract administration may include additional functions or amplified granularity of the functions normally assigned to this role. Depending on the type of IT contract being administered; i.e., Solution, Services, Software, Hardware with Maintenance, or Application Service Provider, some or all of these IT contract administration activities may be required:

- Coordinating any escrow agreement renewals and fee payments.
- Coordinating any warranty or performance escalations.
- Coordinating any software license or maintenance agreements/renewals.
- Informing users of software license access/use rights and limitations.
- Interaction with VITA-NG partnership Service Management Office process.
- Coordinating the return of government-furnished data and information.

- Coordinating the receipt and storage of software configuration documentation.
- Monitoring new software releases.
- Sixty (60) days prior to the expiration of the warranty period, ensure that supplier has notified the agency of such expiration in writing.
- Coordinating any required training sessions.
- Coordinating that Agency, within thirty (30) days of the end of each calendar quarter, provides to supplier a report of the net number of additional copies of the software deployed during the quarter. (From the "Reproduction Rights" clause in the contract, if included.)
- Coordinating any required solution demonstrations.
- Coordinating any testing or IV&V activities.
- Coordinating any Steering Committee meetings or updates.

34.2 Monitor contract compliance

34.2.1 Attend/host contract kick-off meeting

It is in the best interest of all contractual parties to attend a contract kick-off meeting where all project stakeholders are present. The agenda should include a page-by-page review of the contractual agreement, including the main contract document and all exhibits, to discuss all contractual obligations, performance expectations, escalation processes and initial project planning (e.g., schedule, reporting, deliverables, etc.). This is a time to confirm points of contact for the technical and administrative functions of both parties. Most often the contract administrator will coordinate this meeting, which should occur no later than 30 days after contract award. It is vital that the contract administrator be present, even if the meeting is hosted by the contract manager.

The contract administrator must study and become familiar with the contractual documents before the meeting in order to establish a schedule of activities for ensuring compliance by both parties to the contract—the supplier and the agency. Some agencies may have a minimal set of functions for the contract administrator to perform; however, contract compliance requirements may exceed those minimal functions. A successful contract is equally dependent on post-award administration as it is on a well-written statement of work or rigid performance standards. There may be special invoicing and payment clauses, certain insurance/bond requirements, federal grant requirements, extraordinary confidentiality or security issues or specific meeting and reporting requirements.

The activities of contract administration may be split between the project manager and the contract administrator or even with a contract manager. Regardless of how an agency delegates responsibilities of the contract administration function, there should be a written assignment of contract administration expectations and a named individual(s) for each function. The activities of each assignee will complete the "whole" contract administration file, so a check and balance should be required and the consolidation of administrative file data planned for at contract closeout. In other words, the left hand needs to know what the right hand is doing, how and from whom to obtain vital contract administration information and a quality check should occur to ensure there are no holes, missing activities or lost data. The delegation assignment of contract administration must be available to all contract stakeholders.

34.2.2 Monitor supplier certifications and reporting

The contract administrator needs to ensure that the contract file includes all certifications, registrations and/or licenses required by the agency, solicitation and contract award. The procurement lead may have obtained these prior to award; however, the contract administrator must validate the file. These may include small business certification, eVA

registration validation, Anti-Lobbying certification, insurance certificates, bond guarantees, federal debarment compliance, Virginia Tax compliance or payment schedule verification to mention a few. Throughout the contract's duration, validations and/or renewals of these should be conducted by the contract administrator no less than annually.

The contract may call for the supplier's monthly submission of administrative reporting including, but not limited to: SWaM participation, project status, performance status, sales or usage status, and for VITA statewide contracts only, sales and IFA reporting. The timely reporting by supplier must be monitored by the contract administrator to ensure the supplier is contractually compliant. Copies of all such reports should be made available either in the contract file or electronically.

Here are two "musts" when monitoring the supplier's performance in this administrative area:

- Supplier must comply with contractually required certifications, licensing and reporting must be verified prior to the execution of any contract modification increasing the contract's value or scope or any benefit or incentive to the supplier.
- Careful records of any non-compliance must be maintained in the contract file and shared with contract stakeholders, who may be measuring or collecting the supplier's total project performance independently.

The following information may assist the contract administrator's supplier validation process for the above concerns:

- Validate supplier state debarment status on DGS website at: [DGS Buyers Guide](#)
- Validate supplier federal debarment status on federal website if federal funds support the contract at: [Federal Buyers Guide](#)
- Validate supplier state tax compliance status (e.g., no interception being conducted currently) by calling 804-367-8380 or by email to: <mailto:lrms.support@tax.virginia.gov>
- Validate supplier SWaM reporting compliance (VITA only) by email to: swam@vita.virginia.gov
- Validate supplier sales/IFA reporting compliance (VITA only) by email to: ifacoordinator@vita.virginia.gov

34.2.3 Monitor/coordinate subcontract approvals

If the contract requires agency approval of all subcontractors, the contract administrator will ensure the contract file includes copies of such approvals and, in fact, may need to coordinate the processing of any supplier requests for approval. The contract administrator may be required to conduct reference research on the performance, corporate, financial and other viability strengths of proposed subcontractors prior to agency approval for the subcontractor. It is important to verify (or obtain supplier's written confirmation) that the proposed subcontractors are not included on the Commonwealth's or the federal government's (if federal funding supports the contract) debarment or excluded parties lists. An annual validation of subcontractor eligibility status should be conducted.

34.2.4 Monitor deliverables and acceptance

Depending on the complexity and value of the project, the agency's business owner/project manager may handle this activity, may request assistance only from the contract administrator or may request the contract administrator totally handle this activity. If the contract, statement of work or project milestone plan does not include a clear listing of all deliverables, their due dates and submission requirements, the contract administrator

should develop a master list with dates and create a calendar to monitor the supplier's performance of timely deliverables.

The contract may provide that the agency has a certain number of days to accept the deliverables or they will be deemed accepted, which could be to the detriment of the project or agency. Therefore, it is vital that the contract administrator monitor the agency's performance as well as the supplier's.

If the contract requires a transmittal letter to accompany each deliverable or requires the agency to provide written acceptance to the supplier for each deliverable, these documents should be copied to the contract file, whether for e-storage or hardcopy storage. The agency's recipient(s) and delivery location(s) for each deliverable—whether it be product (hardware or software), electronic, paper or service—should be specified in the contract, but if not, the contract administrator will certainly want to ensure that the deliverables are submitted on time and received/accepted in accordance with the contract's requirements as this is a criterion of successful contract performance by both parties.

If the contract requires any specific or special shipping and transportation handling, accountability or liability, this will also need to be monitored for adherence. The function for coordinating this may be assigned to the contract administrator as well. If not, the contract administrator will still need to monitor.

If the contract requires the supplier to provide training sessions or to present a "solution" demonstration as part of their performance commitment, the contract administrator may be responsible for coordinating the location, resources, security access, date and agenda for this. Special media resources may be required by the supplier.

The contract administrator will be required to monitor new software releases if the contract includes a requirement similar to this: "Provide to all (Agency or Authorized Users) no later than the first day of general release, copies of the Software and Documentation revised to reflect any enhancements, including all new releases, upgrades, and access modes, to the Software made by Supplier, including, without limitation, modifications to the Software which can increase the speed, efficiency or base of operation of the Software or add additional capabilities to or otherwise improve the functionality of the Software." This particular deliverable may not be directly specified in the contract's statement of work or list of deliverables, but may be in the actual contract body. This requirement entitled, "New Releases," is in the body of VITA's relevant contract templates; i.e. Software and Solution.

If a deliverable is late, unacceptable or there is some other dispute, the contract administrator may be responsible for coordinating the required communication and resolution. If not, the contract administrator will still need to be aware of all agency-supplier activities, communications and status surrounding such deliverable in the event this situation would affect any other area of the contractual relationship and status. The contract administrator should obtain copies of the relevant paper trail, as the contract file must include complete supporting data regarding such a situation.

34.2.5 Monitor supplier performance

The contract administrator should carefully review the contract for all supplier performance requirements; some of which are clearly defined and others which may be indirectly included. It is recommended that the contract administrator develop a performance checklist and calendar to ensure all performance requirements are exposed for scheduled monitoring.

The contract may specify a clearly defined service level agreement (SLA) or acceptance criteria for deliverables describing expectations for the supplier's technical performance. The contract may also necessitate that indirect supplier performance requirements be monitored—the submission of recurring technical, status and/or administrative reports (see subsection 34.2.2); compliance and licensing certifications (see subsection 34.2.2); key personnel, and business or project management obligations.

- **Technical performance**—Needless to say, there are many variations on technical performance objectives and requirements that could be in a contract. The contract administrator must know exactly what these are and what performance data capture, measurement and reporting requirements exist in order to monitor the supplier's or product's performance and determine how the performance results may impact other areas of the contract's administration, including supplier payments. Close teamwork between the contract administrator and other contract stakeholders will ensure that all required performance results are captured, reported and used in monitoring a supplier's or product's technical performance. Here are examples of how a supplier's or product's technical performance can be captured and monitored.
 - Service level agreements will often require that the supplier provide monthly performance reports that indicate how well they met the performance requirements in order that related monthly invoices reflect any non-performance penalties/incentives (usually tied to a percentage of service level attainment or non-conformance). Such performance parameters may be linked, for example, to "uptime" and "downtime" of a system or web-hosted application or to "response time" and "remedy time" for the procured service.
 - Acceptance criteria may require, for instance, that 100 simultaneous users of a system will not degrade system performance or impact the required maximum time it takes for a user to complete a certain electronic "transaction" or "function." If the system's built-in self-monitoring design captures degradation or error capture then reports can be generated by the agency's system administrator and reported to contract stakeholders.
- **Schedule and budget**—Schedule and budget are two risk-critical performance areas common to non-IT as well as IT contracts. Schedule and budget performance have the potential to severely impact the agency's funding sources—Commonwealth and/or federal grant—and dependent planned or existing technology projects, as well as the supplier's financial condition.

Here's a hypothetical example: A contract for developing and implementing a replacement for a critical incident tracking system that links into multiple statewide databases and a federal database was awarded by a Commonwealth agency on January 1, 2008. The application software of the current 10-year old system will no longer be supportable or operational after June 30, 2009. The contract includes a major project milestone deliverable for a 60-day acceptance testing to be complete February 1, 2009. The total contract fixed price is \$3 million dollars—half from General Funds and half from a federal matching grant. Thirty days into the acceptance testing a major error occurs that the supplier cannot fix without redesigning a critical interface. By this point in time in the project, due to payments triggered by the completion of interim milestones, \$2.5 million of the project budget has been paid to the supplier. With only 6 months and only \$500,000.00 in funds remaining before the old system goes away—"Houston, we have a problem."

You can see how budget and schedule performance have the potential to impact both immediate and extended stakeholders. We'll never know how this project turned out and who suffered the biggest impact, but more than likely it ended up in litigation.

Monitoring schedule and budget performance areas may be assigned to the contract administrator, the business owner/project manager or the contract manager, depending on the size and complexity of the procurement and the level of project management required. If the contract required CIO approval, then VITA's [Project Management Division](#) has ProSight and other tools that the contract's project manager will probably use in performing contract administration functions on these two performance areas. However, the contract administrator will need to be knowledgeable of communications, problems and resolutions surrounding these performance areas and be involved in any related fact-finding, communications, modifications, disputes or claims.

- **Key personnel**—Often an IT contract will include a key personnel term similar to this: "The statement of work may designate certain of supplier's personnel as key personnel or project managers. Supplier's obligations with respect to key personnel and project managers shall be described in the applicable statement of work. Failure of supplier to perform in accordance with such obligations may be deemed a default of this contract or of the applicable statement of work." Additionally, a contract may require written approval by the agency if supplier desires to replace key personnel or named individuals. It is important that the contract coordinator work closely with the business owner/project manager to monitor and enforce whatever terms are in the contract.
- **Project/business process management**—The contract administrator should search the contract and exhibits for any performance obligations related to project/business process management. These may include relevant deliverables; i.e., project plans, quality assurance plans/reporting, project status reports, cutover plans or specific project management and operational processes that supplier is committed to follow and/or substantiate either by providing a defined deliverable or simply by operation of business (i.e., using standards IEEE 1220 and ISO 1006 for monitoring project planning, etc.).

The supplier's contractual performance must be measured by all performance elements and criteria established in the contract. While the reporting, collection, monitoring and evaluation of supplier performance data may be a collective effort by other contract stakeholders, the contract administration function should act as a repository for all performance data and act as overseer to ensure that contractual performance requirements are monitored and reported.

If a supplier's performance is unsatisfactory, the contract administrator and other contractual stakeholders should document, with supporting evidence, their complaint of unsatisfactory or non-conforming performance. For all VITA-issued or VITA-delegated IT contracts, contact scminfo@vita.virginia.gov. For all non-VITA issued or agency non-delegated IT contracts, contact DPS Contract Compliance at 804-786-1602.

34.2.6 Monitor supplier warranties

Supplier warranties may include both a limited warranty and general warranties. Since the **limited warranty** for a product (hardware or software), services or solution usually spans a given time period (30, 60, 90 days or even up to one year), the contract administrator will simply need to know when the warranty period ends and the maintenance or support period begins. This date should be included on any project schedule or contract administration schedule as a tickler. The contract pricing schedule may have included advance payment for

the first year of maintenance or support, or the contract may indicate that the supplier needs to notify the agency within a set number of days prior to the end of the warranty period so the agency has sufficient time to issue a purchase order (PO). VITA contract templates include this statement: "Sixty (60) days prior to the expiration of the warranty period, ensure that supplier has notified the agency of such expiration in writing."

Either way, contract administration must ensure there is no lapse between limited warranty coverage and any required maintenance or support coverage and should coordinate necessary actions, as required, with the business owner/project manager. This may include processing an agency purchase requisition (APR) and PO. In rare cases (e.g., one-time purchase of a single hardware or COTS item), follow-on maintenance or support may not be required. For most other IT procurements, the agency or Commonwealth may be at risk not to have follow-on maintenance or support coverage and have included a requirement in the contract.

Contract administration should review the contract to determine what **general warranties** may need monitoring; for instance, "Supplier will notify agency if the Solution contains any Open Source code and identify the specific Open Source License that applies to any embedded code dependent on Open Source code, provided by supplier under this Contract." Depending on the criticality of the project, the contract administrator may request annual written acknowledgement from the supplier to verify that, "No notifications to any general warranties in Contract Number [] have been required from (date) to (date). Supplier continues to be aware of the contractual general warranty requirements and will notify (name of agency) accordingly."

There may be occasions where the contract administrator will be required to facilitate and coordinate warranty escalation proceedings on behalf of the contract's business owner/project manager. The supplier's escalation process should be described in the contract. The administrator should completely and accurately document and track the paper and communication flow for the contract file.

34.2.7 Coordinate/monitor transmittal of and access to government property/data

If the contract requires transfer of government property, information or data to the supplier for contract performance, the contract administration function must monitor all transmittals in accordance with the agency's property or asset/inventory management processes and procedures. For software and solution IT contracts, coordinating the receipt, distribution and storage of software configuration documentation may occur.

Written and signed transmittal documents must be maintained in the contract file. Additionally, if suppliers require access to the agency's facilities or equipment, the contract administrator will facilitate such access through the agency's security department. Should the transfer of government property, information or data or access to government facilities or equipment require the supplier's personnel to sign confidentiality or non-disclosure agreements, the contract administrator will facilitate this and maintain copies in the contract file.

This same coordination and monitoring would apply to any supplier-provided data, information, material or equipment provided to the agency on a temporary basis rather than as a contract deliverable.

34.2.8 Monitor invoicing and payment

The contract administration function may be required to process supplier invoices through approval cycles with the business owner/project manager before sending to the agency's payment office. However, the contract administrator should first confirm that invoices:

- Include all detail and information specified in the contract,
- Include pricing in accordance with the contract's pricing schedule,
- Ensure no taxes are charged the agency and provide any exemption documentation to supplier
- Reflect any performance penalty/incentive adjustments,
- Include travel expenses that are authorized and in accordance with then-current [Per Diem Amounts](#) as published by the Virginia Department of Accounts,
- Include any required signatory or certifications required in the contract,
- Include any required supplemental reporting (i.e., monthly usage, monthly service level performance statistics)
- Are accurate, complete and corrected by supplier before submitting for approval and payment.

The contract administrator may also be required to monitor that payments are made to the supplier in accordance with statutory regulations [§2.2-4350](#) or [§2.2-4352](#) of the *Code of Virginia*, as applicable, and to assist in resolving any supplier claims regarding payments.

Any claims arising out of a contractual dispute must be processed in accordance with [§2.2-4363](#) of the *Code of Virginia*. Refer to subsection 34.4.7 below for special discussion of final payments to supplier.

[34.2.9 Monitor agency obligations](#)

The contract administrator should carefully review the contract and create a list and schedule that includes all agency obligations under the contract. Successful IT contracts are not only dependent on the supplier's performance, but also on the agency's performance in fulfilling their contractual commitments and enabling, or not preventing, the supplier to perform. The agency's non-performance or interrupted performance could put the contract/project at risk for delayed schedule and increased costs or invite risk to the Commonwealth for a contract dispute. IT contracts may require any of the following and more:

- Informing agency and other Commonwealth users of software license access/use rights and limitations and obtaining signed user acknowledgement for the contract file.
- Informing Commonwealth users and third-party representatives of all confidentiality restrictions and obtaining signed confidentiality or non-disclosure statements for the contract file.
- Ensuring that the agency fulfills any contractual obligation that includes the following or a similar requirement: "Within thirty (30) days of the end of each calendar quarter, the Agency must provide to Supplier a report of the net number of additional copies of the Software deployed during the quarter." (From the "Reproduction Rights" clause in the contract, if included.)
- Enabling or facilitating the conduct of any testing, IV&V activities, supplier demonstrations, and/or training sessions within a certain timeframe, with a specific technology environment or resources already prepared for use.
- Providing certain data, information, equipment or facilities to the supplier within a certain timeframe for enabling any software or solution requirements definition, design, interface, testing or implementation efforts by the supplier.
- Defining a timeframe for the review and acceptance of any deliverable and testing.

- Preparing and providing specific reports, technical data, specifications, standards, software configuration/architecture, legacy/interface code or data to be converted (including the condition of such data).
- Arranging the attendance of any IV&V, Steering Committee or other invitee for any critical project reviews or other contract-related meetings per the contract's schedule.
- Interaction with VITA-NG partnership Service Management Office, VITA Project Management Division or VITA Security experts for any infrastructure preparation or integration efforts required for supplier's performance.
- Providing to supplier any notification of non-conformance or error discovered related to supplier's performance (product, service, solution) within a given timeframe.
- Providing any contractually required technical or administrative notification obligation within a given timeframe.
- Facilitating any Steering Committee, CIO or other Commonwealth required approvals during the term of the contract without compromising the contract's schedule.
- Ensuring that project, technical and other agency stakeholders do not directly or indirectly alter, increase or decrease (i.e., scope creep) the supplier's performance obligations as required by the contract without formal contract modification.
- Processing, approving and paying supplier invoices within statutory timeframes.

34.2.10 Process disputes, claims and resolution

The contract administrator may be responsible for processing or participating in fact-finding and resolution for any disputes and claims arising during performance of the contract. Any claims arising out of a contractual dispute must be processed in accordance with [§2.2-4363](#) of the *Code of Virginia* and the contractual requirements. The significance of a well-maintained and complete contract administration file or e-storage location for accessing the supporting documentation is of critical importance.

An alternative disputes resolution (ADR) provision may be in the contract, regardless of if the agency has an established ADR process or not. If it does not and the contract was delegated to the agency by VITA, then the agency may use VITA's ADR process. Contact [SCM Policy and Compliance](#) for more information.

A supplier may be considered in default if it fails to perform in accordance with the terms of the purchase order or contract. These factors should be considered prior to taking any default action.

- The specific reasons for the failure.
- The period of time needed to obtain the goods or services from other sources compared to the time that delivery or performance could be accomplished by the delinquent supplier.

If a supplier fails to perform, the agency should notify the supplier and try to reach a satisfactory solution. If the matter is still not resolved a "Notice to Cure" may follow. The notice must be given in writing advising the supplier that non-delivery or non-performance is a breach of contract and, if the deficiency or non-conformance is not cured within a certain number of days (as specified in the contract's language), the agency will terminate the contract for default and hold the supplier liable for any excess costs. Upon the expiration of the cure time period, if a satisfactory resolution has not been reached, the agency sends the supplier a Termination for Default Letter and takes repurchase action by awarding to the next lowest bidder or re-soliciting. If the repurchase results in increased costs to the agency, the agency invoices the original supplier for the excess costs, giving a specified period of time for repayment to be completed. Until the excess costs repayment has been received, the supplier may be removed from the agency's supplier list. If

repayment has not been made by the end of the specified period of time, collection action may be taken under the agency's approved debt collection policy. In addition, concurrent action to debar the defaulted supplier can be initiated. Suppliers shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to their fault or negligence. Failure of a supplier's source to deliver is generally not considered to be an unavoidable cause.

Agency contract administrators may obtain assistance from their OAG representative in accordance with their agency's protocol and processes. For VITA-issued or VITA-delegated agency contracts, agency administrators may also obtain VITA's guidance by contacting: SCMpolicy&compliance@vita.virginia.gov. VITA's contract administrators should also involve SCM's Policy and Compliance specialists, who, rather than the individual contract administrator or sourcing specialist, will contact VITA's OAG representative, if necessary.

34.2.11 Process requests under FOIA

The contract administrator may be required to coordinate any requests for information pertaining to the contract under the Virginia Freedom of Information Act (FOIA). While the contract administrator should process response to any request in accordance with the agency's protocol and processes, the Commonwealth does provide information at this link: [Virginia Freedom of Information Advisory Council](#). VITA SCM contract administrators and sourcing specialists should follow SCM's current procedures. Additional guidance also may be found in Chapter 10, "General IT Procurement Policies" [[insert link](#)].

34.3 Modification processing and administration

Supplier compliance with contractually required certifications, licensing and reporting must be verified prior to the execution of any contract modification increasing the contract's value or scope or any benefit or incentive to the supplier. The following information may assist the contract administrator's supplier validation process:

- Validate supplier state debarment status on DGS website at: [DGS Buyers Guide](#)
- Validate supplier federal debarment status on federal website if federal funds support the contract at: [Federal Buyers Guide](#)
- Validate supplier state tax compliance status (e.g., no interception being conducted currently) by calling 804-367-8380 or by email to: <mailto:lrms.Support@tax.virginia.gov>
- Validate supplier SWaM reporting compliance (VITA only) by email to: swam@vita.virginia.gov
- Validate supplier sales/IFA reporting compliance (VITA only) by email to: ifacoordinator@vita.virginia.gov

Additionally, contract administrators must adhere to statutory requirements regarding contract modifications found in the *Code of Virginia*, [§2.2-4309](#) which reads:

"§ [2.2-4309](#). Modification of the contract.

A. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Governor or his designee, in the case of state agencies, or the governing body, in the case of political subdivisions. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

B. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

C. Nothing in this section shall prevent any public body from placing greater restrictions on contract modifications.”

The contract administrator is required to be familiar with the contract's modification or amendment language and to ensure that the proposed modification can be done and is approved by all required stakeholders—primarily the supplier and the agency's business owner/project manager. The contract administrator will be responsible for ensuring that all modifications are processed in accordance with the contract and any statutory or federal (if the contract is federally funded) requirements/limitations. The following requisites apply to IT contract modifications:

- All necessary approvals for any modification are validated in the contract file.
- If funding is required for a modification, all funding is received and the funding change does not conflict with [§2.2-4309](#) of the *Code of Virginia*.
- The modification does not create a conflict with any other provision of the contract.
- Validation of the supplier's debarment status, state tax compliance and SWaM or sales/IFA reporting (if applicable) compliance is recorded in the file.
- The modification does not conflict with related statutory regulations in the *Code of Virginia* and Virginia Public Procurement Act.
- The supplier is required to sign the modification document before the agency does.
- The format for the contract modification document is in accordance with the agency's protocol.
- Notification to relevant stakeholders and updates to electronic records and contract or financial databases is in accordance with the agency's processes and procedures.
- Copies of all fully executed versions are in the contract file
- For VITA SCM, provide all contract modifications in .pdf format to: contracts@vita.virginia.gov. Hard copies should be placed in the contract file. For statewide contracts that require web updates follow established processes.

34.3.1 Contractual terms

The contract administrator is responsible for understanding and being able to inform stakeholders on the entire contract being administered—all contractual components, exhibits and terms. VITA's statewide contract templates include the following language under the “Entire Contract” provision, customized for each contract type (solution, services, software, hardware with maintenance and application service provider). This excerpt is taken from the statewide “solution” template: “The following Exhibits, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

<u>Exhibit A</u>	Solution Requirements
<u>Exhibit B</u>	Solution Options List; Fees, Service Charges, and Payment Schedule
<u>Exhibit C</u>	Escrow Agreement
<u>Exhibit D</u>	Statement of Work (SOW) Template
<u>Exhibit E</u>	Change Order Template
<u>Exhibit F</u>	End User Licensing Agreement (for reference only)
<u>Exhibit G</u>	Certification Regarding Lobbying

This Contract, its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, or

referenced by the Supplier's Proposal shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order issued hereunder. This Contract may only be amended by an instrument in writing signed by VITA and Supplier. In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit A, any individual SOW, Exhibit B.

An Authorized User and Supplier may enter into an ordering agreement pursuant to this Contract. To the extent that such ordering agreement, or any order or SOW issued hereunder, include any terms and conditions inconsistent with the terms and conditions of this Contract, such terms and conditions shall be of no force and effect."

Additionally, the core contractual provisions included by reference in VITA contracts and VITA-delegated contracts issued by agencies and found at this link: [VITA's Core Contractual Terms](#) are updated annually on July 1 to reflect any legislative changes. The link, as used in the contract documents, will automatically update when the designated hyperlink is opened, even for contracts already in place. Because these are statutory, no contract modifications are necessary as they change. The supplier must follow current Virginia statutory requirements just like agencies do and no further negotiations are required for them to be effective. The same applies to the required eVA provisions at VITA's link: [Required eVA Terms and Conditions](#). References to these in the VITA contract templates state: "The then-current terms and conditions in documents posted to the aforereferenced URLs are subject to change pursuant to action by the legislature of the Commonwealth of Virginia, change in VITA policy, or the adoption of revised eVA business requirements. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URLs periodically."

34.3.2 Term or termination

The contract administrator will process all modifications due to term extension, option exercise or renewal of the contract and/or related agreements; i.e. software license, escrow agreement.

The contract administrator will want to ensure that any modification to extend the term of the contract, or to exercise a term or renewal option, should be completed no later than 30 days before the current expiration date. This is also critical for any escrow agreement, software license or maintenance renewals. Any lapse may create risks for the agency and Commonwealth. The same timely action should be taken if the contract includes a "Transition of Services" provision where the supplier agrees to provide assistance to the agency should the contract effort be transitioned to another supplier or to the agency due to self-sufficiency.

The contract administrator will process any termination documentation—for breach, default, non-appropriation of funds or if the agency terminates for convenience. When termination occurs for any reason except the end of the contract term, notices must be given to the supplier in accordance with the contractual requirements. If termination for default occurs as a result of the cure and remedy provisions of the contract, be sure that the allotted time for the notice, the cure period and the re-acceptance period by the agency have occurred and that all relevant supporting documentation is in the contract file. All termination actions shall be done in accordance with the contractual requirements (including alternative disputes resolution and disputes resolution provisions) and the agency's processes and procedures. Refer to subsection 34.2.10, above, for more information on termination for breach or default.

Upon any termination, neither the Commonwealth, nor the agency, nor any authorized user shall have any future liability except for deliverables accepted by the agency or the authorized user or services rendered by supplier and accepted by the agency or authorized user prior to the termination date. The contract administrator will then begin the contract closeout process. Additionally, VITA statewide contracts should be removed from the VITA web site and any supplier catalogues, associated with the contract, removed from eVA by notifying SCMadmin@vita.virginia.gov for assistance.

34.3.3 Assignment/novations

The contract administrator will process all supplier assignment and novation requests or notices according to the contract's requirements. Most contracts will state that the supplier may not assign a contract without the prior written approval of the agency. The licensing rights of the contract will dictate how the agency can or cannot assign its rights to another party; however, the contract hopefully was negotiated to allow license assignment and/or access to other Commonwealth agencies, including VITA, to not prohibit infrastructure and/or enterprise architecture redesign, supportability and improvements that may occur during the life of the contract.

If a supplier is bought out by or merges with another corporation, the contract administrator should perform a financial viability analysis and obtain a Dun & Bradstreet report on the new corporation before agreeing to anything. The new business entity could introduce new risks to the contract/project if they are not financially or professionally responsible. Also it will be necessary to confirm and update any new contact information.

34.3.4 Pricing

Before processing a pricing amendment, the contract administrator must review the contract's pricing language. The modification may entail a simple unit/line item addition, deletion or adjustment that has no impact on the contract's total value or milestone pricing. If the modification requires an increase in the contract's value, the contract administrator must ensure that budget is available with the business owner/project manager and that such budget is funded, not just approved for funding. Any modification to the contract's total value must follow the requirements of [§2.2-4309](#) of the Code of Virginia, provided in full text in subsection 34.3, above.

Additionally, pricing changes must comply with any parameters specified in the contract, for example: " No such increase shall exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. Any such change in price shall be submitted in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section."

34.3.5 Scope

The contract administrator will also process contract scope modifications presented by the business owner/project manager. Careful consideration of scope changes must be promoted to remove potential risks to the agency and the Commonwealth, especially in the areas of budget, schedule, interdependencies that may impact existing or planned legacy systems and/or infrastructures, or in exceeding or reducing the intent and objective of the original procurement.

A scope modification may range from adding another training session to adding another interface or increasing the number of software licenses. Each of these examples would also increase the contract price, so that a modification to the pricing schedule would also be required. An additional training session or adding more software licenses would not likely affect any critical milestones or the project's schedule; however, a new interface certainly could, so any milestone deliverable and payment dates would need adjustment. Also, access to VITA-NG infrastructure, certain data or Commonwealth facilities could be impacted; planned testing schedule and many other areas may have to be modified due to a single scope change. Supplier price proposals that result from the scope change should be incorporated into the modification document.

Here is another example of how a scope change could impact other contract terms: If a performance or acceptance criteria or service level agreement element were to be modified, it would likely require negotiations between the parties. The supplier or agency may want to adjust any performance incentives or penalties based on the change.

The contract administrator should seek assistance from the business owner/project manager to help identify all areas of the contract that would require modification due to a scope change and incorporate them all in the same modification. Not to do so could introduce conflicts and/or areas of potential dispute. VITA is also available to offer assistance to agencies in this area by emailing: scminfo@vita.virginia.gov.

34.3.6 Administrative changes

Administrative modifications that the contract administrator may process include, but are not limited to, changes in:

- contact information or address
- invoicing or payment terms
- administrative compliance updates (certifications, licensing, etc.)
- reporting requirements or frequency (for administrative reports such as SWaM or sales/IFA, but not technical reports tied to the scope or statement of work)
- insurance or bond requirements
- legislative changes that affect the contract

34.4 Conduct contract closeout

Ideally, a closeout letter should be prepared by the contract administrator to accompany closeout reports/certificates tailored to the contract's requirements, for approval signature by the contract's business owner/project manager, the supplier and/or applicable agency-internal governance stakeholders. These stakeholders may include the SWaM coordinator, the inventory/asset manager, the financial manager, and for VITA statewide contracts, the IFA coordinator. Each stakeholder must acknowledge that they have received all final contract items due as they relate to their area—final SWaM report, the return of government or supplier data/equipment/software, final invoice/payment and final sales/IFA report and payment.

34.4.1 Final supplier reports

The contract administrator must validate in writing that all interim and final SWaM, and for statewide contracts that all interim and final sales/IFA reports and payments, have been received by the agency's designated SWaM and IFA coordinators. The contract administrator should review the contract to determine if any other administrative reports were required by the supplier and if so, obtain validation for these as well.

34.4.2 Final supplier deliverables

The contract administrator must validate in writing that all interim and final deliverables have been submitted by the supplier.

34.4.3 Final acceptance

The contract administrator should obtain a written and signed acceptance from the contract's Business Owner/Project Manager to confirm that all contract deliverables, technical reports, products and services have been received, are satisfactory and are formally accepted on behalf of the Commonwealth. A copy of the Business Owner/Project Manager's formal acceptance document is adequate. In the case of VITA statewide contracts, this may not be practical; however, written authorization to this effect from the VITA Strategic Sourcing Manager should be included in the closeout documentation.

34.4.4 Final property report

A final property report, when applicable, should be created to reflect the movement, transfer, return and receipt of any government-to-supplier (or vice versa) data, equipment, software, information, materials etc., where such items must be returned to the rightful owner or otherwise disposed of per the contract's requirements. Copies of signed transmittals for these actions should be placed in the contract file and attached to the final property report. This report should be coordinated with the Asset/Inventory Management Office at VITA or the agency, as applicable.

34.4.5 Final patent/royalty report

A final patent/royalty report, when applicable, is processed if there was a royalty or patent agreement between the agency and the supplier related to any product developed under the contract. While this is usually not applicable to Commonwealth IT contracts, it may be a flow-down requirement for a federally subsidized contract or when a federal grant is involved.

34.4.6 Final escrow report

A final escrow report, when applicable, is prepared if there was an escrow agreement between the agency and the supplier related to any source code under the contract. A copy of any agreement should be obtained and placed in the contract file. A copy of any ongoing or renewable agreement may also be provided to the agency's legal department for follow-on action and retention.

34.4.7 Final payment

For all agencies, final payment on the contract should be the last step in the closeout process. This may not be feasible for VITA statewide contracts where agencies purchase via individual purchase orders through eVA and when a purchase order term extends beyond the contract's end date. However, the VITA contract administrator should confirm with the supplier that there are no delinquent payments due by any agency. If there are, the VITA contract administrator should pursue closure on behalf of the supplier.

The contract administrator should review the contract (or purchase order) for any reduction, retainage, cost-share or fee-share obligations and confirm there are no outstanding performance incentives or penalties to ensure that any related adjustments or offsets are included in the final invoice, by mutual agreement of the supplier.

Final payment must not be made to the supplier if the supplier is delinquent in submitting any contractually required deliverable or report, or until all applicable closeout reports have been signed by the appropriate stakeholders. Additionally, the contract administrator may want to confirm with subcontractors that they have been paid by the supplier (prime contractor) for all work performed and billed to-date prior to the release of final payment.

Should there be any pending contract disputes at the time of contract closeout, in accordance with [§2.2-4363](#) of the *Code of Virginia*, any related contractual claims, whether for money or other relief, shall be submitted by the supplier in writing to the Commonwealth (agency) no later than 60 days after final payment has been made to the supplier; however, written notice of the supplier's intention to file such claim must be given to the agency at the time of the occurrence or beginning of the work upon which the claim is based. The contract administrator will facilitate bringing this to closure.

It is critical that this phase be expedited to ensure compliance with statutory payment requirements provided in the *Code of Virginia*, Sections [2.2-4347](#) through [2.2-4354](#).

An acknowledgement must be signed by the supplier to validate that final payment has been invoiced and received. If not, the supplier must attach a final invoice to the acknowledgement. The contract administrator will send the acknowledgement and invoice through the appropriate approval process, then to the appropriate agency paying office for payment and will monitor until the final payment is acknowledged by the paying office and confirmed by supplier's signed receipt.

34.5 Conduct contract retirement

While the contract administrator should follow its agency's protocol and process for retiring a contract, there are three rudimentary steps to complete as provided in the following subsections. VITA SCM contract administrators should also follow established processes or by contacting the [Supervisor, Contract Administration](#).

34.5.1 Update agency/Commonwealth contract, portfolio management and financial systems

The contract administrator will follow its agency's protocol and process for updating any financial or contract systems to move the contract to a closed or inactive status. In some systems, removing the contract completely from an active contract list is required. The contract administrator must ensure all electronic data touch points are updated to reflect a terminated contract status in accordance with their agency's requirements, including any Department of Accounts and [Federal Grant Management](#) closeout or reporting requirements, as applicable.

In addition, VITA contract administrators will remove or coordinate with designated process owners (i.e., IFA Coordinator), the need for status change or removal of a terminated statewide contract from the VITA website database, from the posted eVA catalog and from other locations (i.e., IFA supplier database) in accordance with the VITA contract retirement processes and procedures.

For all agencies, the contract administrator should work with the contract's Business Owner/Project Manager or Contract Manager to ensure that terminated contract status updates are processed in the VITA Project Management Division's (PMD's) [ProSight](#) or other Commonwealth Portfolio Management systems, as required. VITA PMD does require that CIO-approved major and non-major project contracts undergo a specific closeout process through ProSight.

34.5.2 File closed

After the first two steps of contract retirement are completed, the contract administrator should verify that the contract file is complete and ready for archiving according to its agency's retention processes and the [Virginia Public Records Act](#). No further procurement activity may occur against the contract once it is closed. Generally, the provisions of the

contract regarding software license, rights to work product, warranty, escrow, confidentiality, and liability and indemnification, and the general provisions shall survive the expiration or termination of the contract. At the time the contract administrator notifies the contract's stakeholders of the closeout status, or when obtaining the signed closeout reports from them, notification of that contract's specific survival provisions would be prudent to include.

34.5.3 File archived for retention

The [Virginia Public Records Act](#) requires agencies to cooperate with the Library of Virginia's records retention and disposition directives and requirements for public records. Section [§42.1-85 B.](#) of the *Code of Virginia* states:

"B. Any agency with public records shall cooperate with The Library of Virginia in conducting surveys. Each agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of such agency. The agency shall be responsible for ensuring that its public records are preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic records as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration. Any public official who converts or migrates an electronic record shall ensure that it is an accurate copy of the original record. The converted or migrated record shall have the force of the original."

The contract administrator must ensure that all paper and electronic records associated with the contract and contract administration are maintained in accordance with the [Virginia Public Records Management Manual](#). The agency should have a designated Records Officer to assist the contract administrator in accurate records collection and archiving. The [Library of Virginia Records Retention and Disposition Schedule](#) dictates the following retention and destruction requirement for contract administration records, not of a fiscal nature, and the contract and agreements: "Retain in accordance with terms of contract or 5 years after termination, whichever is greater, then destroy. Refer to *Code of Virginia* [§8.01-246](#)."

VITA contract administrators may obtain further guidance and assistance by visiting the following VITA Records Management website: [VITAweb Portal - Records Management](#).

34.6 Contents of contract administration file

At a minimum, each contract administration file should include the following items, as applicable to the specific IT contract:

- Executed contract
- Supplier certifications
- Supplier insurance certificates/bond guarantees
- Stakeholder contact detail
- Record of actions used to administer the contract
- Description of contract administrator duties
- Amendments/modifications
- Verification of required reporting (i.e., transmittal documents)
- Copies of agency acceptance approvals
- Copies of transmittals for government- or supplier-furnished data, information, material and equipment
- Copies of confidentiality agreements and/or software license user agreements
- Claims related to the contract
- Release of claims document
- Disputes and resolution documentation (including cure notices and termination letters)

- FOIA requests and responses
- Contract closeout documents